



NEW ZEALAND CENTRE FOR
POLITICAL RESEARCH

THE YEAR BY NUMBERS - 2013

8

years since the NZCPR was established

50

NZCPR Weekly columns published

50

guest opinion pieces published

235

BreakingViews blog postings

+50000

signed our Declaration of Equality
in support of equal rights for all citizens

+30000

copies of NZCPR Weekly sent
each week.

+1000000

visitors to nzcpr.com

countless

media appearances and published
articles



NEW ZEALAND CENTRE FOR
POLITICAL RESEARCH

Informed
thinking

“

You cannot help the poor by destroying the rich.
*You cannot strengthen the weak by
weakening the strong.*

You cannot bring about prosperity
by discouraging thrift.

YOU CANNOT LIFT THE WAGE EARNER UP BY
PULLING THE WAGE PAYER DOWN.

*You cannot further the brotherhood of man by
inciting class hatred.*

YOU CANNOT BUILD CHARACTER AND COURAGE BY
TAKING AWAY MEN'S INITIATIVE AND INDEPENDENCE.

*You cannot help men permanently by doing for
them, what they could and should do for
themselves.*

- Abraham Lincoln

”

Work not welfare

Governments consume
wealth
created by others.

Tail wagging
MMP
dog.

Full and final...
until next time.

New Zealand Centre for Political Research
PO Box 984
Whangarei 0140
NEW ZEALAND
Ph 0064 9 4343836
Mb 0064 21 800111
Fax 0064 9 4344224
www.nzcpr.com
muriel@nzcpr.com

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FROM THE FOUNDING DIRECTOR



The New Zealand Centre for Political Research public policy think tank provides research-based analysis and commentary to inform public opinion and influence decision-makers. We believe informed and empowered citizens are at the heart of a well functioning democracy. Through our weekly newsletters we are helping to shape the future direction

of New Zealand.

The NZCPR is not affiliated to any political party and neither seeks nor receives government funding or benefits. Our operation relies entirely on financial support from the readers of our newsletters.

During 2013, the NZCPR provided leadership in a number of important ways, including:

- advocating for sensible economic and social policy reform
- analysing policy incentives and identifying long-term unintended consequences
- reviewing political developments

A core role of the NZCPR is to act as a public “watchdog” over the government's legislative programme including promoting calls for submissions on proposed law changes so that more people can

have a say and become involved in the democratic process.

During the year we engaged in a number of high profile debates including:

- promoting policies for growth: smaller government, lower taxes, less regulation
- challenging the claim that 260,000 New Zealand children live in poverty
- advocating on-going welfare reform, especially of the sole parent benefit
- outlining the negative effects of radical environmentalism and socialism
- supporting the continuing reform of the Resource Management Act
- exposing the Emissions Trading Scheme as a bureaucratic money-go-round with no environmental benefits
- challenging the merits of local body amalgamation
- questioning the so-called housing affordability crisis

Race Relations

Race relations was a significant issue in 2013. In the absence of any other groups opposing the acceleration towards racial separatism since National

FROM THE FOUNDING DIRECTOR - YOUR DONATION DOLLARS AT WORK IN 2013

signed their coalition agreement with the Maori Party, we have taken a firm stand against racial privilege. Based on our fundamental belief that equality should be a foundational principle of life in New Zealand, all preferential treatment based on race should be abolished.

Constitutional Review

The constitutional review campaign was a key initiative in that race relations debate. In response to the establishment of a review of the constitution by the National and Maori parties, we launched our own *Independent Constitutional Review*. Our Panel was very ably led by David Round, a law lecturer from Canterbury University, along with Associate Professor Elizabeth Rata of Auckland University, Professor Martin Devlin of Massey University, Professor James Allan of Queensland University, NZCPR Research Associate Mike Butler, and NZCPR Founder and Director Dr Muriel Newman.

In order to raise awareness of the constitutional review and to invite people to engage in the submission process, we ran a major public information advertising campaign in leading newspapers around the country. As a result of our ads, the government review was swamped with submissions and had to extend their closing date by a month. Our Independent Review attracted over 1200 submissions.

The fact that a Treaty-based constitution for New Zealand was not recommended by the government advisory panel can be largely attributed to our campaign. However, an independent taxpayer-funded body has been suggested to maintain an on-going

investigation into the constitution. Since such a body risks capture by extremist groups, it should be strongly opposed.

The final report of the Independent Constitutional Review Panel, *A House Divided*, can be downloaded from the NZCPR.com website. It has been sent to the Prime Minister and Cabinet for their consideration.

The report opposes major changes to the constitution and strongly rejects the proposition that the Treaty of Waitangi should be given constitutional status. It also contains a summary of the submissions we received: 97 percent of submitters opposed local government Maori seats; 96 percent opposed the parliamentary Maori seats and a separate Maori roll; 96 percent opposed the Treaty of Waitangi being included in our constitutional arrangements; 95 percent believed any change to our constitution would only be legitimate if approved by voters through a public referendum; 86 percent wanted to retain our present flexible constitutional arrangements, with ultimate law-making power held by elected MPs; 83 percent supported the *Declaration of Equality* - promoting equal rights and an end to preferential treatment based on race - being enacted by Parliament.

The *Declaration of Equality* - which has been running in conjunction with the independent constitutional review - now has over 50,000 signatures.

Treaty Myths

It is a concern to most New Zealanders that Maori supremacists have reinterpreted the Treaty of Waitangi as an agreement conferring partnership status and

CONTINUED OVER

FROM THE FOUNDING DIRECTOR - YOUR DONATION DOLLARS AT WORK IN 2013

sovereignty rights on tribal corporations. Their goal is to entrench iwi in a position of unassailable racial, legal, cultural and economic privilege over all other New Zealanders.

Rather than challenging these fictional claims, successive governments have chosen appeasement. Their sacrificing of the truth for political advantage is now leading the country into a racially divided future.

This year we have published a number of articles by our contributing authors challenging these claims of partnership and sovereignty, including two papers by Judge Anthony Willy, a retired District Court Judge and former Canterbury University Law Lecturer. In the first, he explained that there is no legal authority for the proposition that Maori enjoy some form of partnership and sovereignty with the Crown:

“In the context of a constitutional debate and in particular whether the Treaty is a constitutional document the distinction is fundamental. In the result Maori and the Crown are not partners in any sense of the word. Indeed it is constitutionally impossible for the Crown to enter into a partnership with any of its subjects. The true position is that the Crown is sovereign but owes duties of justice and good faith to the Maori descendants of those who signed the treaty. Once this distinction is understood there can be no question of the sovereignty of the Crown in New Zealand represented by the Governor General and The New Zealand Parliament, being shared with any other person or entity. It is one and indivisible.”

A synopsis of the second paper, *Sovereignty and the Treaty of Waitangi*, is published in this report.

The research and analysis by Judge Willy and our Independent Constitutional Review Panel members, makes it clear that there is no legal or constitutional basis on which the Treaty confers any form of partnership or sovereignty on Maori. While such claims are being used by tribal leaders to gain race-based rights and privileges, they are not based on law but on politics. Demands by iwi, that their Treaty partnership should confer reserved seats on local councils, or on governance bodies of waterways, coastal areas, National Parks, and the like, are without foundation. There is no Treaty partnership and no shared sovereignty, and iwi leaders should be dealt with in exactly the same manner as any other citizen.

Treaty Transparency Project

The Treaty Transparency Project, which is designed to increase public awareness of the Treaty of Waitangi settlement process, is led by NZCPR Research Associate and Independent Constitutional Review Panel member Mike Butler. The report quantifies the amount of taxpayer funding and public resources that have been used to settle Treaty claims - some for the third and fourth time. The report exposes the questionable co-management deals and delayed settlements that are increasingly being used in Treaty settlements, binding future governments and taxpayers to a never-ending liability of resource transfers and payment top-ups. The latest Treaty Transparency Report can be found in the *NZCPR Research Reports* section of our website.

FROM THE FOUNDING DIRECTOR - YOUR DONATION DOLLARS AT WORK IN 2013

Direct Democracy - Citizens Veto

The NZCPR continues to support direct democracy to restore political power back to the people through binding referenda and the power of veto. We believe citizens initiated referenda should be binding but with some essential provisos to ensure the integrity of the process. We also support a citizens' right of veto over new legislation to safeguard the public against the abuse of power that is now commonplace under MMP.

The reality is that governments all too often pursue their own political self interest against the wishes of the voters who put them into office. The lack of public safeguards to curb the excessive legislative power of minor coalition parties is a serious deficiency of our MMP voting system. The power of veto would restore some urgently needed balance.

New Website

As a result of a great deal of hard work, the transition to our new NZCPR.com website was successfully completed during 2013. The new site, which uses a content management system with increased social networking and media functionality, is working well. It was a huge effort to move over 1,000 articles from our old soon-to-be-decommissioned server onto the new platform, but we believe that our NZCPR archive of quality research and commentary stretching back to 2005 is worth preserving.

Working Groups

The NZCPR is in the process of establishing a number of Working Groups to help widen our influence and

strengthen our capabilities. In particular our volunteers will provide help with on-going research and analysis in five key areas:

- **Democracy:** *To encompass direct democracy, constitutional issues, and governance - especially at local government level including challenging the wisdom of amalgamation*

- **Equality:** *To advocate for equal rights and an end to preferential treatment based on race*

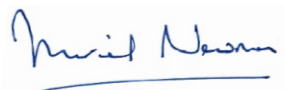
- **Opportunity:** *To promote the conditions in which economies flourish - limited government, flat tax, an end to excessive regulation, and the protection of private property rights*

- **Environment and Resources:** *To promote sensible environmental policies including the repeal of the Emissions Trading Scheme, further reform of the Resource Management Act, and a positive approach to harnessing New Zealand's mineral wealth for the benefit of all citizens*

- **Social Policy:** *To support policies that strengthen the family through further reform of the welfare system including replacing the sole parent benefit with support based on work, along with other sensible changes to improve health, education, housing, law and order, and super*

Social Media

The NZCPR uses a range of social media channels including Facebook, Twitter, and YouTube. Further developing our social media capabilities and presence is a key goal during 2014.



Dr Muriel Newman
FOUNDING DIRECTOR

OUR PEOPLE

Dr Muriel Newman BSc, Dr mathematics education (Rutgers)

NZCPR Founder and Director

Muriel Newman established the public policy think tank, the New Zealand Centre for Political Research, in 2005 after nine years as a Member of Parliament. Her background is in business - as the Assistant General Manager of Michael Hill Jeweller - and education. She is a former Chamber of Commerce President, currently serves as a director of a childrens' trust, and is the convenor and member of the Independent Constitutional Review Panel.

Frank Newman BMS M.Prop.Stud (dist)

NZCPR Associate Director

Frank Newman is an accountant, columnist, and the author of numerous books including on investment matters. He has a special interest in local government having served for two terms on the Whangarei District Council.

David Round LLB (Hons) (Canterbury)

NZCPR Research Associate

David Round teaches law at the University of Canterbury and is a constitutional law expert. He is the Chairman of the of the Independent Constitutional Review Panel and author of *"Truth or Treaty? Commonsense Questions about the Treaty of Waitangi"*.

Dr Ron Smith Bsc (Hons) (Southampton), MA, DPhil (Waikato)

NZCPR Research Associate

Ron Smith is Co-Director of International Relations and Security Studies at Waikato University. He has a particular interest in nuclear policy and, more generally, in energy and security issues. Tertiary qualifications in both Chemistry and Philosophy also underpin an interest in the interface between science and society.

Mike Butler BA in English Literature

NZCPR Research Associate

Mike Butler is a property investor and manager. He is a member of the Independent Constitutional Review Panel, author of *"The First Colonist - The life and times of Samuel Deighton 1821-1900"*, a former contract writer for the New World Encyclopedia, and he was the chief sub-editor of the Hawke's Bay Herald-Tribune between 1986 and 1999.

Katrina Jensen BA, BSc (Hons), Dip HR Mngt

NZCPR Administrator

Katrina Jensen has a background in Human Resources and Administration, most recently working for a Wellington-based IT company. She is currently at home with two young children, and works part-time for the NZCPR.

The NZCPR archives contain over 1000 articles produced by the NZCPR and its guests. These form a valuable source of information drawn upon by researchers, report writers and decision makers.

OUR SUPPORTERS

Our supporters are people like you. We receive no government funding and have no affiliations to any political party.

The NZCPR relies 100% on the support of individual donations and the generosity of those who see the need for an independent research-based voice on matters affecting the prosperity and well-being of the community and the rights of individuals.

In addition, the excellent grassroots feedback and contributions of subscribers through the NZCPR Debating Chamber and weekly polls ensures that their values and views on key political and social issues are available to influence policy makers.

We could not continue without the support of those who appreciate the value of the material we



“ *The greatest challenge facing mankind is the challenge of distinguishing reality from fantasy, truth from propaganda. Perceiving the truth has always been a challenge to mankind, but in the information age it takes on a special urgency and importance. WE MUST DAILY DECIDE WHETHER THE THREATS WE FACE ARE REAL, whether the solutions we are offered will do any good, whether the problems we're told exist are in fact real problems, or non-problems.* ”

- Dr Michael Crichton (2003)

NZCPR WEEKLY

NZCPR Weekly is New Zealand's largest online newsletter, delivered free to over 30,000 readers, 50 weeks of the year.

The articles are read by key decision makers and widely published in the media. Each column is supported by guest commentary from some of the world's leading authorities in their fields. Our guest contributors in 2013 are listed on the pages that follow.

By delivering well researched material the NZCPR plays an important role in influencing better social and political decision making.

One of the most commented on articles was **LESSONS FROM SINGAPORE** (13 May 2013).

NZCPR Weekly

New Zealand's largest online newsletter

LESSONS FROM SINGAPORE

NZCPR Weekly
13 May 2013

Thursday is budget day, the day when the government outlines their economic plan for the country for the next twelve months. It is also a time of judgement on how well the economy has performed over the last year. In National's case, recent economic reports show that their belt tightening has started to produce results.

When National was elected into office in November 2008, the country had already fallen into recession. Under the stewardship of a Labour administration, the economy had stalled months ahead of the on-set of the global financial crisis. The new government's goal was to rebalance the economy – reduce out-of-control government spending, while protecting the most vulnerable New Zealanders from the hard edges of the recession. An important part of that plan was a strong focus on removing the barriers to growth – improving infrastructure and reducing the red tape and bureaucracy that was undermining business confidence and holding back progress.

While the Christchurch earthquakes had a massive impact on the government's progress, National's plan does appear to be working. The country is on track for a return to surplus by 2014-15, the tax take is higher than expected, unemployment is lower, there are more jobs, and higher growth.

A recent New Zealand Institute of Economic Research business opinion survey showed confidence in the

LESSONS FROM SINGAPORE...continued

March quarter was at a 3-year high, pointing to growth of around 3 percent a year. Our major trading partners – Australia, China, the US, and Japan – have all reported economic data ahead of expectations, and consumer confidence is growing.

The Government's accounts show that the deficit was \$3 billion for the first 8 months of the financial year, \$556 million better than forecast in December – reflecting good control of expenditure and rising revenues. The Crown's operating balance, which records change in the value of all the government's activities, including its investments, recorded a surplus of \$4.3 billion.

In commenting on the performance of the New Zealand economy, Christine Lagarde, the managing director of the International Monetary Fund said, "All I can tell you is the IMF is very supportive of what is being done by the Government ..." and "If you look at the numbers, if you look whether it is growth, whether it is employment, whether it is inflation, whether it is debt, overall it is very stable and it is also very promising ... it's certainly a lot better than what we see in other parts of the world." And she went on to say that the economic policies are supportive of good fundamentals and "policies we believe are sound and solid." [Herald, IMF praises direction of NZ economy.]

In comparison, Ms Lagarde described the outlook in Europe as "still very challenging". Overall EU unemployment has hit a new record with more than 19 million jobless. This includes one in four of the region's 15 to 24 year olds. In Greece, a staggering 64.2 percent of young people were out of work in February, and, in an attempt to turn this situation around, the monthly

minimum wage for under-25s has been slashed by a third. In Portugal, where the economy is predicted to shrink by a further 2.3 percent this year, and where civil service pay and sick leave benefits have just been cut, more and more young people are leaving the country to find employment abroad.

However, there are some success stories in Europe. A special report "The secret of their success" was recently published by the Economist, identifying Sweden, Denmark, Finland, Norway, and Switzerland as the top five countries when assessed on a range of measures including global competitiveness, ease of doing business, global innovation, corruption, human development, and prosperity. Based on league tables produced by the World Bank, the World Economic Forum, and a number of other organisations, New Zealand was ranked a commendable sixth – first equal for a lack of corruption, third for ease of doing business, fifth for human development, thirteenth for global innovation, and 23rd for global competitiveness. [Economist, The secret of their success.]

The Nordic countries that are now topping the table can attribute their success largely to the fact that over the years they were forced to

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LESSONS FROM SINGAPORE...continued

reduce government spending and balance their budgets. To do this they lowered taxes, ensured greater flexibility in the workplace, encouraged entrepreneurs, and restricted welfare entitlements, making far greater use of the private sector to deliver social services.

The Economist suggests that other nations could learn from the success of these Nordic countries, and it certainly appears that the National government has adopted a similar strategy through an economic growth programme that includes reducing government spending, balancing the budget, tightening up welfare, and encouraging the private sector.

Another country with wisdom to share is Singapore. In the sixties, Singapore was a very poor tropical island with few natural resources, a rapidly growing population, substandard housing, and on-going conflict between ethnic and religious groups. Thanks to the exceptional leadership of Lee Kuan Yew, the country was able to transform itself in just a generation, so that today it is one of the world's highest ranked economies.

This week's NZCPR Guest Commentator is Dr Henri Ghesquiere, a former Director of the International Monetary Fund's Singapore Regional Training Institute – and author of *Singapore's Success: Engineering Economic Growth*. In his illuminating paper *From Third-World to First*, Dr Ghesquiere outlines how Singapore achieved its ambitious goal of moving from a third-world to first-world nation in record time. He explains that a number of factors strongly influenced a young Lee Kuan Yew – as an 18 year old he witnessed the brutality of the Japanese occupying forces against the civilian population during World War II. He

experienced the debilitating effects of colonialism and ethnic strife, and he saw the political threat of the communists, who wanted to turn Singapore into an Asian Cuba.

In 1959, at age 35, Lee Kuan Yew – by then a “brilliant Cambridge-educated lawyer” – was elected prime minister of Singapore. His goal was a future of shared prosperity and safety: “I wanted Singapore to be a developed nation in the shortest time possible”.

Dr Goh Keng Swee, the architect of Singapore's economic strategy and Lee Kuan Yew's right hand man, explained, “We must strive continuously to achieve economic growth. We should not be distracted by other goals”.

Those words “in the shortest time possible” and “single-minded focus” can be attributed as holding the key to Singapore's success. Their economic and political strategy – and institutions – over the past five decades have been shaped with that singular goal in mind: whatever it would take to succeed. Dr Ghesquiere believes a crucial factor is the government's budgetary discipline – living within their means: “In Singapore total revenue in the Government budget is only 19 percent of GDP. But government expenditure is even lower. Frugality inspires the Government to manage its expenditures rigorously. Singapore's famous Jurong tropical bird park was created when a finance minister rejected the proposal for a zoo. He persuaded his Cabinet colleagues that feeding birds would be much less expensive than feeding lions. Civil service staffing is lean: the government does not act as employer of first and last resort. Efficiency is paramount: for example, invoicing of services sold by private agents to

LESSONS FROM SINGAPORE...continued

government entities is all electronic and centralized. Perfect paperless records are available with minimal manpower. Singapore's budget is not burdened by generalized price subsidies for utilities or energy products.

"Public enterprises in Singapore tend to be consistently profitable. Many are listed on the stock exchange and are partly in private hands. They do not draw budgetary support for operating losses. If systematically loss-making they would be liquidated or merged. Singapore Airlines has long been ranked among the most admired companies in the world. At one time, the government threatened to close it down if management and unions failed to cooperate.

"Accordingly, despite relative low taxation, the government budget registers surpluses, not deficits. Consequently, whereas other countries have a public debt ratio in some cases as high as 140 percent of GDP, Singapore has just the opposite: net public assets possibly of a similar magnitude. Heavily indebted governments face steep interest payments on the expenditure side of their budget that pre-empt development outlays. The Singapore government by contrast earns substantial returns on its net assets, (conservatively estimated at perhaps 5 percent of GDP). These resources boost the revenue side of the budget, allowing development expenditure such as for infrastructure and education. The government's accumulated surpluses have been built the old-fashioned way: over decades thanks to annual saving and the power of compounding. The strong national balance sheet inspires confidence in entrepreneurs and investors."

In his illuminating appraisal, Dr Ghesquiere explains the importance of incentives in public policy – a low corporate tax rate of 17 percent attracts companies and encourages them to create jobs, and personal income tax with the highest bracket at 20 percent incentivises people to work.

In comparison, of course, New Zealand's corporate tax rate is 28 percent and our top personal tax rate is 33 percent. As tax competition forces down tax rates, New Zealand's corporate tax rate is becoming increasingly uncompetitive – it is above the European average of 20.67 percent, above the EU average of 22.74 percent, above the Asian average of 22.36 percent, above the OECD average of 25.4 percent, and above the global average of 24.08 percent

Although reducing corporate tax would be a very efficient way of boosting business growth and job creation, the government has ruled out significant tax cuts in the foreseeable future. They have stated that their priority is to reduce debt – from a net 30 per cent of GDP to 20 per cent between 2017 and 2020, before tax cuts can be considered. However, they have explained that they will continue to cut the cost of a wide range of government fees and levies – the recent reduction in the frequency of warrant of fitness tests is apparently just a start.

Thursday's Budget is not expected to contain any big surprises, but one hopes it has a vision for a better New Zealand based on the roadmap provided by the likes of Singapore. [END]

GUEST CONTRIBUTORS 2013

The NZCPR is extremely grateful for the contribution to public affairs made by our Guest Commentators to our NZCPR Weekly newsletters and the Breaking Views blog. Their expert opinion greatly strengthens the effectiveness of the NZCPR.

Our 2013 Contributors:

Allan, Professor James - Garrick Professor of Law at the University of Queensland and member of the Independent Constitutional Review Panel.

Baron, Steve - author, columnist and founder of Better Democracy NZ.

Bourne, Ryan - Head of Economic Research at the Centre for Policy Studies in the UK.

Bowden, Professor Roger - former Professor of Economics and Finance at Victoria University.

Bradford, Max - former Minister of Energy and architect of the power reforms of the late 1990s.

Brash, Dr Don - former Governor of the Reserve Bank, former leader of National and ACT.

Brill, Barry - former Cabinet Minister and current chairman of the Climate Science Coalition.

Butler, Mike - NZCPR Researcher, property investor, author, journalist, and member of the Independent Constitutional Review Panel.

Carling, Robert - Senior Fellow at the Australian Centre for Independent Studies.

Chapple, Reuben - Auckland property manager, researcher and writer.

Coote, Michael - freelance writer and financial journalist.

Crampton, Dr Eric - Senior Lecturer in Economics and Finance at the University of Canterbury.

Devlin, Professor Martin - QSM, Professor Emeritus from Massey University and member of the Independent Constitutional Review Panel.

Donnelly, Dr Kevin - Director of the Australian Education Standards Institute.

Douglas, Sir Roger - former Labour Minister of Finance and founder of the ACT Party.

Eckhoff, Gerry - former MP, Kellogg Scholar, high country farmer, now Otago regional councillor.

GUEST CONTRIBUTORS... continued

Edgeler, Graeme - Wellington barrister and commentator on electoral and constitutional law.

Edwards, Dr Bryce - politics lecturer at Otago University.

Epstein, Professor Richard - Senior Fellow at the Hoover Institute, Professor of Law at the New York University Law School and a senior lecturer at the University of Chicago.

Forbes, Viv - Chairman of the Australian Carbon Sense Coalition.

Fresne, Karl du - freelance journalist, columnist, and a former editor of *The Dominion*.

Franks, Stephen - former MP, now principal of a Wellington-based Commercial and Public Law practice.

Gemmell, Professor Norman - Chair in Public Finance at Victoria University.

Ghesquiere, Dr Henri - former Director of the International Monetary Fund's Singapore Regional Training Institute and author of *Singapore's Success: Engineering Economic Growth*.

Hampton, Denis - researcher with a long-standing interest in Treaty of Waitangi issues.

Herscovitch, Benjamin - Beijing-based Policy Analyst at the Australian Centre for Independent Studies.

Hide, Rodney - political commentator and former leader of the ACT Party.

Johnson, Dr Tom - former representative rugby player and CEO of Lion Breweries Central Region.

Jones, Sir Bob - well known businessman, author and commentator.

Kotkin, Joel - Distinguished Presidential Fellow in Urban Futures at Chapman University in California.

Leyland, Bryan - consulting engineer, electricity market specialist, and chairman of the economics panel of the NZ Climate Science Coalition.

Littlewood, Michael - Co-Director of the Retirement Policy and Research Centre at Auckland University.

Mackenzie, Fiona - Auckland-based marketing consultant.

GUEST CONTRIBUTORS... continued

McCaffrey, Daniel - writer and editor.

McDermott, Phil - consultant in urban, economic and community development.

Mitchell, Lindsay - commentator on welfare issues.

Newman, Frank - author, columnist and accountant.

Niemietz, Kristian - Poverty Research Fellow at the London-based Institute for Economic Affairs.

Paterson, Rob - Mount Maunganui lawyer with an interest in public affairs.

Patrick, Dr Mike - environmental consultant and former regulator with Maritime NZ.

Prebble, Hon Richard - political commentator and former ACT leader and Labour Minister.

Rata, Professor Elizabeth - Associate Professor of Education at Auckland University and member of the Independent Constitutional Review Panel.

Ridley, Viscount Matt - a member of the British House of Lords, former editor of the Economist, journalist, and author.

Round, David - Law lecturer at the University of Canterbury, author, columnist, and Chairman of the Independent Constitutional Review Panel.

Sammut, Dr Jeremy - Research Fellow at the Australian Centre for Independent Studies.

Saunders, Professor Peter - Senior Fellow at the Australian Centre for Independent Studies.

Schiff, Dr Aaron - economist specialising in competition and regulation, and former Auckland University lecturer.

Smith, Dr Ron - Co-Director of International Relations and Security Studies at the University of Waikato.

Trotter, Chris - political commentator and writer.

Vlaardingerbroek, Dr Barend - Associate Professor of Education at the American University of Beirut.

Weichelt, Dr Marion - Ambassador of Switzerland.

Willy, Judge Anthony - retired District Court Judge and former Canterbury University Law Lecturer.

2013 #1 GUEST ARTICLE

Judge Anthony Willy: Sovereignty and the Treaty of Waitangi

August 31, 2013

One of the most commented on guest commentaries in 2013 was the paper by Judge Anthony Willy, *Sovereignty and the Treaty of Waitangi*. The full paper can be found in the *NZCPR Research Report* section of our website.

Here are some introductory comments by Judge Willy and an abridged version of the report.

***Notes on the Sovereignty and the Treaty of Waitangi article**

I thought it was important given the remit of the Constitutional Review committee that somebody should look into and give a view on the question of whether or not the Treaty of Waitangi has any residual constitutional significance which could lead to it being incorporated into a written Constitution. In particular whether it could form the basis of some form of shared sovereignty. [1]

In the paper which resulted from that interest I make it plain that the law has recognised the moral force of the Treaty and on a number of occasions both in the domestic Courts and The Privy Council, has required the Government of the day to honour promises which were made by the Crown to Maori in the Treaty document. Parliament has also passed the Treaty of Waitangi Act 1975 which established the Waitangi Tribunal with jurisdiction to examine whether or not the Crown has since 1840 failed to honour promises made in the Treaty.

In the event that breaches are established the Tribunal has the right to recommend what should be the response of the Government to remedy such breaches. This is all well understood and both major political parties have embraced the process greatly enhancing the mana, and financial standing of Maori. No doubt this process will continue until all of the tenable claims have been settled.

What is of more enduring concern is whether or not the Treaty is capable of forming a platform for some form of shared sovereignty involving the Crown and Maori. After reviewing the relevant law and something of the history of the Treaty I have come to the view that:

1. Maori did not exercise any collective sovereignty over New Zealand in 1840 as that concept was then understood at International law.
2. The Treaty did not confer sovereignty on the Crown. It was acquired by the willing concession of the Chiefs who signed the treaty that Queen Victoria would become the sovereign of New Zealand, and possibly in the case of The South Island the acquisition of sovereignty by British occupation.
3. In return for the acceptance of British sovereignty Maori acquired the benefit of the guarantees contained in the Treaty.
4. There is no legal or Constitutional basis on

Sovereignty and the Treaty... continued

which it could be said that the Treaty contains within it the residual potential to confer some form of joint sovereignty on Maori.

5. The "principles of the Treaty" referred to in the Treaty of Waitangi Act are to be found expressed in the instructions of the British government to Captain Hobson. The Treaty itself does not express any "principles." It is simply a bargain between the Crown and the Chiefs who signed the document which provided that, in return for recognising Queen Victoria as their Sovereign the Chiefs would acquire British citizenship, and enjoy the protections referred to in the document.

ABRIDGED VERSION OF "SOVEREIGNTY AND THE TREATY OF WAITANGI"

This is a summary of a paper written by Judge Anthony Willy in August 2013. The full text can be found in the NZCPR Research Report section of the website and should be read in order to establish the reasoning, history and legal authorities which support the conclusions reached in this abbreviated summary.

1. The Legal Status of the Treaty

The two relevant principles relating to treaties are:

a. To have any lawful effect a treaty can only be made between sovereign states; and

b. A treaty has no force of law in the signature countries unless it is expressly adopted into the law of those countries according to the constitutional usages of the parties to the treaty; in this case by Act of Parliament by the Governments of New Zealand and the United Kingdom.

The first requirement

Whatever was intended by the instructions to Hobson on this point the view taken by the New Zealand Courts from the earliest time was that Maori had no sovereignty to cede to the Crown.

In *Wi Parata v the Bishop of Wellington and the Attorney General*; Chief Justice Prendergast held: [2]

The existence of a pact known as the Treaty of Waitangi entered into by Captain Hobson on the part of Her Majesty with certain natives at the Bay of Islands and - adhered to by some other natives of the Northern Island.. so far as the instrument purported to cede sovereignty... it must be regarded as a simple nullity no body politic existed capable of making cession of sovereignty nor could the thing itself exist.

The Chief Justice held that the title to the lands of New Zealand were: *acquired by discovery and*

Sovereignty and the Treaty... continued

priority of occupation

It therefore seems impossible to argue that Maori society in 1840 recognised any notion of sovereignty as was understood by the International Law of the day, and therefore in that sense had none to cede to the British Crown. It is clear from the plain wording of the Treaty that the Queen become the sovereign of New Zealand subject to the guarantees contained in the document, in return for which Maori would enjoy the full rights of British citizens and the protection of the Crown from each other, and from settler groups which were established in the colony before the Treaty.

The second requirement

As to the second crucial requirement of the law relating to treaties; that they have no force or effect unless legislated into municipal law. This was clearly established by the Privy Council in *Te HuHu Tukina v Aotea District Maori Land Board* and has never been doubted. In so far as it affected the land tenure of Maori existing at the date of the signing of the Treaty, which is clearly the crucial relationship between the protection of native land ownership rights and the acquisition of sovereignty by the Crown Martin CJ said in *R v Symonds*, [3]

The right of the Crown and its British subjects is not derived from the Treaty of Waitangi nor could that Treaty alter it... To the state shall belong the

management and responsibility for (sic, land) distribution. In general it asserts nothing as to the course which shall be taken for the guidance of colonisation but only that there shall be one guiding power.

Conclusions about the current legal status of the Treaty.

- a. It has no force in New Zealand municipal law, and confers no rights which are capable of enforcement in a New Zealand Court.
- b. The stipulations in the Treaty relating to native title to land have been incorporated into New Zealand municipal law and have been enforceable by and against Maori and non-Maori land owners since the earliest time of colonisation.
- c. Sovereignty to New Zealand was acquired by the willingness of the chiefs who signed the Treaty, to recognise Queen Victoria as their sovereign, and possibly in the case of the South Island by discovery and occupation. All of which was subject to the solemn obligating of the sovereign to safeguard the existing rights and property of the indigenous occupants.
- d. The Promises made in the Treaty were solemnly made and remain binding on the conscience of the Crown. [4]

Sovereignty and the Treaty... continued

2. The Treaty of Waitangi Act 1975.

Parliament has had 173 years (at the time of writing) to give legislative effect to the Treaty and incorporate it into the municipal law of New Zealand, but it has declined to do so. The reason must have been obvious to successive governments; there is nothing left of the words of the Treaty to incorporate. The safeguards promised to Maori relating to their land (until recently the overwhelming concern of Maori) have been comprehensively legislated for, and are part of the municipal law of the country protected by the Courts and the Bill of Rights. [5]

It is clear by necessary inference all that is left is for Parliament to determine is what is the "practical application" of the "principles of the Treaty". Nowhere does the Act state what are the principles of the Treaty which are to be "practically applied". Nowhere in the Treaty document are any principles enunciated. It is a simple transaction whereby Maori gave up whatever status they claimed over the lands of New Zealand and recognised the Queen as sovereign of New Zealand. In return they received the protection of the British Crown and a guarantee that:

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates

Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession.

And in the preamble

Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects.

A view often heard expressed is that the Maori did not understand the content and effect of the Treaty in so far as it ceded sovereignty to the Crown. Apart from being an insult to the intelligence of the chiefs who participated, it is clear from the speeches for and against made by the Chiefs present at Waitangi that they understood full well what was being asked of them.

3. The Principles of the Treaty

Given there are no "principles" enunciated in the Treaty of Waitangi Act, there are only two possible conclusions as to what Parliament intended in referring to them. For reasons discussed in the full text of the article it seems clear that the principles referred to are those set out in the instructions to Governor Hobson which said among other things:

Sovereignty and the Treaty... continued

An increase of wealth and power consequent on any colonisation would be "inadequate compensation for the injury which must be inflicted on this kingdom by itself by embarking on a measure essentially unjust and but too certainly fraught with calamity to a numerous and inoffensive people whose title to the soil and to the sovereignty of New Zealand is undisputed and has been solemnly recognised by the British Government.

The instructions eschew any intention by the Crown to seize the lands of New Zealand by force but only govern them: *with the free intelligent consent of the natives*

And: the exercise on your part of mildness, justice an perfect sincerity

but recognising that Maori could not be protected from the possible depredations of the settlers and of:

the impossibility of Her Majesty extending to them any effectual protection unless the Queen be acknowledged as sovereign of their country

[NOTE: These instructions and intentions gained a mixed reception from the Chiefs present at Waitangi some were bitterly opposed to granting sovereignty to the British Crown, some were in favour, and it is their views which prevailed. Speech extracts are detailed in the full report.]

Conclusions on the Treaty of Waitangi Act.

If it is correct to view of what is meant by the "principles" referred to in the Act as being a statutory recognition of the aspirations and putative promises of the British Government in instructing Hobson to attempt to effect a treaty with Maori, then the Act fulfils its purpose of setting up a mechanism for enquiring into whether or not those promises have been kept. Viewed in that way, the Treaty settlement process created by the Act is entirely consistent with the terms of the instructions to Hobson and The Act recognises the principles which informed the Treaty, and provides a means of enquiring whether the principles have been adhered to.

Anthony Willy
Abbreviated summary
January 2014

FOOTNOTES:

1. In an earlier paper I expressed the view that there is no legal authority for the proposition that Maori enjoy some form of partnership status with the Crown. What they do have is the benefit of the right to have honoured the promises made in the Treaty.
2. NZ Jurist, 1878, Vol. 3 NS at pg 387.
3. R v Symonds, 1847, Pg. 395.
4. New Zealand Maori Council v Attorney General [1987] NZLR 641.
5. New Zealand Statutes, 1990.

One people or
two races?
You choose.

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Our blog site BreakingViews.co.nz has gone from strength to strength. During 2013 our team of regular bloggers produced thought-provoking commentary on the issues of the day.

Five of the most popular blog postings from our authors were:

1. Mike Butler: White privilege vs Maori privilege, March 15, 2013.

"On to the vexed subject of white privilege versus Maori privilege. There is a chapter detailing "white privilege" in the treatyist bible "Healing our history – the challenge of the treaty of Waitangi", mostly written by Robert Consedine. He is the Consedine who conducts Project Waitangi workshops around the country. These workshops use psychodrama, an action method often used as a psychotherapy, in which clients use spontaneous dramatization, role playing and dramatic self-presentation to investigate and gain insight, in this case, into how wicked and racist the white coloniser has been. This column summarises Consedine's "white privilege" arguments and uses Consedine's sub-heads to see whether there is Maori privilege."

2. Richard Prebble: Insight into politics - David Cunliffe, November 4, 2013.

"Being Leader of the Opposition may be the worst job in politics but it is also the job with the best prospects. Do the job well and you are rewarded with the politics' top job. So it is rather important to discover who David Cunliffe is."

3. Fiona Mackenzie: Monkey business in the town hall, November 3, 2013.

"Strict Maori powhiri protocol was imposed on Auckland Council's inauguration last Tuesday (29th Oct). Women councillors were directed into the back row behind all their male colleagues, then to the end of the line-up for the hongi. One councillor said she was "shoved" into the back, while another explained that the women simply followed each other. It's hard to imagine these strong, assertive women willingly

being so meek and submissive – especially as their ranks contain at least one ex-MP, two ex-mayors and a deputy mayor. Wherever the truth lies, the appearance of discrimination and rudeness towards our democratically-elected councillors (and, by inference, all women) was shocking."

4. Michael Coote: Iwi plans push tribal supremacy, August 19, 2013.

"In its draft Unitary Plan, Auckland Council slips in mention that it will, 'Require [land] subdivision, use and development ... to incorporate the outcomes articulated by mana whenua through consultation and within iwi planning documents'."

5. Lindsay Mitchell: Child poverty can't be cured through benefit system, November 26, 2013.

"The government is reportedly reconsidering its opposition to extending Paid Parental Leave from 14 to 26 weeks. This comes despite Treasury advice that there would be 'minimal benefit from increasing the length of parental leave.' Last year Treasury analysed who was using paid parental leave, labour market outcomes, and child health outcomes. It found that, '...there is not a strong evidence-based argument to support extending the length of paid parent leave.'"

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Dr Muriel Newman
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